The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: S.C. Jones Services, Inc.

File: B-226972

Date: June 10, 1987

DIGEST

1. Protest that the contracting agency improperly allowed correction of an apparent clerical error in a firm's low bid after bid opening is denied where examination of low bid reveals that clerical mistake as corrected by the agency was obvious in nature and could be readily corrected by applying standard mathematical calculation and where it was clear that a mistake had been made, how it was made, and what the bidder had intended to bid.

2. Where a partnership submits a low bid and informs the agency after bid opening that its application for incorporation was approved by the state, a protest of the award to the new corporation based on the general rule that the entity awarded the contract must be the entity that submitted the bid is denied since an exception to the general rule permits the transfer of rights and obligations arising out of a bid when the transfer is to a legal entity which is the complete successor in interest to the bidder.

DECISION

S.C. Jones Services, Inc., protests the award of a contract to H&S Clearing and Grading under invitation for bids (IFB) No. F44600-87-B-0020, issued by Department of the Air Force to provide grounds maintenance at Langley Air Force Base, Virginia. Jones, the incumbent contractor, contends that the Air Force improperly permitted H&S to correct its bid on the basis of an apparent clerical mistake, and also improperly permitted the firm, a partnership when the bid was submitted, to transfer its bid to H&S, a newly organized corporation, after bid opening and prior to award.

We deny the protest.

The IFB called for fixed-priced bids for a base year and four option years. As the issues are the same for each year, we will, for the sake of simplicity, restrict our

discussion to the base year. The IFB required unit prices and stated that if they were not provided the bid would be considered nonresponsive. The IFB stated that in case of a variation between the unit price and the extended price, the unit price would prevail. The IFB further provided that award would be made in the aggregate to that responsive and responsible bidder whose price was most advantageous to the government, price and other factors considered.

Bid opening was held on March 23, 1987, and numerous bids were received. After H&S' bid was opened, the bid opening official recognized that certain extended prices in the schedule did not reflect the sum of H&S' unit prices. An H&S representative then stood up, stated that he had followed the government's previous oral advice in completing its bid and handed the bid official a yellow sheet of paper with hand-written totals for each line item.1/ One set of figures was designated "True Bid" and a higher set of figures was designated "Original Bid." The figures were read aloud and accepted "subject to later Government verification." Each set of figures would result in a bid substantially below that of Jones.

H&S's prices for Line Items 0001AA and 0001AB totaled $104,990.40 and this total and the unit prices from which it was derived was not affected by the error. H&S' original and corrected bid for the subitems of Line Item 0001AC is shown below:

(Original Bid)
Line Item 0001AC

	Quantity	Unit	Unit Price	Amount
H-1 LAWN MOWING	30	EA	$14.00	$420.00
H-2 EDGING	15	EA	10.00	150.00
H-3 SHRUB TRIMMING	2	EA	75.00	150.00
H-4 FERTILIZING	1	EA	30.00	30.00
H-5 OVERSEEDING	1	EA	30.00	30.00
H-6 LEAF REMOVAL	2	EA	75.00	150.00
H-7 WEEDING BEDS	6	EA	75.00	450.00
H-8 AERATING	-0-		N/A	N/A
H-9 MULCHING	1	EA	100.00	100.00
TOTAL NUMBER OF QUARTERS (12) TOTALS			$4,908.00	$17,760.00

1/ The Air Force admits that its buyer furnished H&S erroneous information concerning the preparation of its bid.

(Corrected Bid)
Line Item 0001AC

H-1 LAWN MOWING	30	EA	$14.00	$5,040.00
H-2 EDGING	15	EA	10.00	1,800.00
H-3 SHRUB TRIMMING	2	EA	75.00	1,800.00
H-4 FERTILIZING	1	EA	30.00	360.00
H-5 OVERSEEDING	1	EA	30.00	360.00
H-6 LEAF REMOVAL	2	EA	75.00	1,800.00
H-7 WEEDING BEDS	6	EA	75.00	5,400.00
H-8 AERATING	-0-		N/A	N/A
H-9 MULCHING	1	EA	100.00	1,200.00

TOTAL NUMBER OF QUARTERS (12)
TOTAL $122,750.40

No unit prices were changed and the major change was that the "AMOUNT" column reflected the unit prices multiplied by the quantity with the result multiplied by 12 which was the number of houses (quarters) to be serviced and which was previously omitted. Further, unlike before, the last entry ($122,750.40) reflected the grand total of Line Items 0001AA, 0001AB, and 0001AC, and reflected H&S' true total bid rather than the sum of subitems 0001AC. As can be seen, the only indication in the schedule that the grounds of 12 quarters (houses) had to be serviced was the statement below the subitems of Line Item 0001AC that "TOTAL NUMBER OF QUARTERS (12)" but there was no column or line provided for the results of multiplying each subitem by 12.

The Air Force concluded that the unchanged unit prices were those intended by H&S, that those prices were inconsistent with the extended prices (extended for the stated quantity and for 12 quarters) and that this inconsistency could be resolved by properly extending the unit prices as provided for in the IFB and then adding all line items. Accordingly, the Air Force waived the error as a minor clerical informality and awarded the contract to H&S at its corrected total price of $122,750.40.

Jones agrees that an obvious mistake was made by H&S but contends that it could not be corrected as a minor informality since the effect on the price would be substantial. Jones further contends that it could not properly be corrected as a mistake in bid because the prices intended by H&S could not be determined from the bid itself as there are at least two reasonable methods of calculating H&S' intended prices.

Under the Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.406-2 (1986), a contracting officer may correct a clerical mistake in bid without further agency approval

after the bidder verifies the intended bid. Tektronix, Inc., B-219981, Nov. 27, 1985, 85-2 CPD ¶ 611. To be corrected as a clerical error, however, both the mistake and the intended bid must be apparent from the face of the bid and the solicitation. We think it is obvious from the face of the bid and the IFB that H&S made a mistake, how it was made and what H&S intended to bid as the total for the base year. In its original bid, H&S simply multiplied its unit prices for the subitems of Line Item 0001AC by the specified quantities, added the results and then multiplied the total by 12. The method apparently envisioned by the Air Force involved multiplying each unit price by the specified quantity and multiplying each result by 12 and then adding those results. Either method is correct and each results in $17,760 as the total for Line Item 0001AC. The only mistake made by H&S was its failure to add this total to the $104,990.40 total for Line Items 0001AA and 0001AB for a grand total of $122,760.40 which is the same total as in the corrected version. Thus, H&S' intended bid was clear and the contracting officer could readily correct the bid by simple mathematical calculation. See 48 Comp. Gen. 420 (1968); Railroad Builders, Inc., B-189102, Oct. 13, 1977, 77-2 CPD ¶ 292.

Further, we find no merit to Jones' contention that there are at least two reasonable methods of calculating H&S' intended price. Jones recognizes that the Air Force was reasonable in its approach but insists that it would be equally reasonable to add up the extended prices in the "AMOUNT" column for a total of $1,480. This figure added to the $104,990.40 total for Line Items 0001AA and 0001AB results in a base year cost of $106,470.40 as compared to $122,750.40 calculated by the Air Force. This approach requires the assumption that the unit prices resulted from lesser numbers being multiplied by 12, and would lead to the unreasonable conclusion that the price for each lawn mowing would be about $1.17 and that the prices for each of the services rendered under the other subitems would be similarly reduced to unrealistic levels. We therefore reject this argument and deny this protest ground.

Next, Jones contends that the Air Force erred in accepting a bid from H&S as a partnership and then awarding a contract to H&S, a newly formed corporation, thus violating the general rule that the entity awarded the contract must be the entity that submitted the bid. This limitation is based on the Assignment of Claims Act of 1940, 41 U.S.C. § 15 (1982), which prohibits the transfer of a contract or any interest thereon. This rule, however, is not absolute. An exception permits the transfer of rights and obligations arising out of a bid where the transfer is to a legal entity which, as

bidder. FAR, 48 C.F.R. § 42.1200. While such a transfer normally requires an agreement between the government and the parties recognizing the successor in interest, we have permitted such an award to stand where there has obviously been no prejudice to the competition on the government as a result. See Ionics, Inc., B-211180, Mar. 13, 1984, 84-1 CPD ¶ 290.

Jones also contends that the contracting officer improperly determined that H&S was responsible, insisting, however, that it does not contest the merits of the decision but, instead, states that the H&S partnership and the H&S corporation should be treated as affiliated concerns and therefore it is challenging the contracting officer's failure to comply with the requirements of FAR, 48 C.F.R § 9.104-3(d). This provision provides that normally, affiliated concerns shall be considered as separate entities except that an affiliate's past performance and integrity may be considered when they adversely affect the prospective contractor's responsibility. Under FAR, 48 C.F.R. § 19.101, business concerns are affiliates of each other if directly or indirectly, either one has the power to control the other or another firm has the power to control both.

The record reveals that an exhaustive preaward survey resulted in an affirmative determination of H&S' responsibility as a partnership. H&S states that this partnership was "merged and absorbed" into the corporation which completely took over the assets and liabilities of the partnership and there is no evidence to the contrary in the record. Thus, the corporation is the complete successor to the partnership, rather than an affiliate, and we have no basis on which to object to the award. Ionics, Inc., B-211180, supra.

The protest is denied.

for Seymour Efros
Harry R. Van Cleve
General Counsel